

**REMARKS/ARGUMENTS**

**A. SUMMARY OF THIS AMENDMENT**

By the current amendment, Applicants basically:

- Editorially amend the specification;
- Amend claims 9-16; and
- Respectfully traverse all prior art rejections.

**B. SCOPE OF AMENDED CLAIMS UNALTERED**

In this reply, claims 9-16 are amended merely to address informal issues and the put the claims in a form closer to U.S. practice. The scope of the claims remain substantially the same.

**C. §102 REJECTION – KAMEZAKI ET AL.**

Claims 9, 11, 13 and 15 stand rejected under 35 U.S.C. § 102(b) as allegedly being rejected under Kamezaki et al. (JP 63-271487 A). *See Office Action, pages 2-3.* Applicants respectfully traverse.

For a § 102 rejection to be proper, the cited reference must teach or suggest each and every claimed element. *See MPEP 2131;MPEP 706.02.* Thus, if the cited reference fails to teach or suggest one or more elements, then the rejection is improper and must be withdrawn.

In this instance, Kamezaki et al. fails to teach or suggest each and every claimed element. For example, independent claim 9 recites, in part “wherein said one end portion of said reflux plate is disposed above a fly peak point in a vertical direction of said one end portion of the developer provided by a rotation of said stirring roller.” The Examiner alleges that a bottom left portion of a guide plate 17 as illustrated in Fig. 1 of Kamezaki et al. is disposed above an area

where the developer flies. However, Kamezaki et al. makes no mention of whether the bottom left portion of the plate 17 is disposed above the fly peak point of the developer. That is, Kamezaki et al. is completely silent regarding the peak point. Thus, contrary to the Examiner's allegation, Kamezaki et al. does not teach or suggest the feature of an end portion of a reflux plate being disposed above a fly peak point in a vertical direction of the end portion of the developer as recited in claim 9.

This alone is sufficient to distinguish independent claim 9 from Kamezaki et al. But in addition, claim 9 recites, in part "wherein said one end portion of said reflux plate is disposed at a position where a plane passing through a rotation center axis of said stirring roller crosses said reflux plate at right angles." Fig. 5 of the present application, which illustrates a non-limiting embodiment of the relative positionings of the reflux plate 6 and the stirring roller 7, illustrates the concept.

In contrast, Kamezaki et al. lacks any description regarding the relative angles between the paddle wheel 6 and the guide plate 17. Apparently, the Examiner concluded on the basis of the drawing alone that the recited feature is shown. However, it is well settled that when the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on the drawing features are of little value. *See MPEP 2125*. Thus, to the extent that the Examiner relied upon the drawings alone, the reliance is improper. Further, even if it is assumed that the drawings are to scale, it is clear that the plane parallel to the plane of paper passing through the rotation center axis of the roller 6 does not pass through the plate 17 at a right angle and actually crosses at an angle more than 90°. This is also sufficient on its own to distinguish claim 9 from Kamezaki et al.

Yet further, claim 9 recites, in part “wherein an inclination angle of said reflux plate is larger than an angle of repose of the developer.” The Examiner recognizes that Kamezaki et al. is silent regarding this issue. But, the Examiner simply asserts that the inclination angle of the plate 17 is required to be larger than the angle of repose the performed desired function of guiding surplus developer from the roller 6. In other words, the Examiner asserts that the feature is inherent.

It is well settled that the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In relying upon the theory of inherency, the Examiner must demonstrate that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. *See MPEP 2112*. The Examiner did not demonstrate that the feature is inherent.

Kamezaki et al. clearly states that the purpose of the device is to facilitate the recovery of a developer by providing a developer returning means for transferring a developer carried by a paddle wheel, in the direction reverse to the carrying direction of this developer, on a partition plate. *See Abstract*. In Kamezaki et al., rotating the paddle wheel 6 in a direction opposite the carrying direction facilitates the recovery of the developer. While having the inclination angle of the plate 17 being greater than the repose angle may facilitate this goal, it is not an absolute requirement for this goal. Therefore, inherency is not demonstrated.

For at least the above stated reasons, independent claim 1 is distinguishable over Kamezaki et al. Independent claim 13 recites similar features. Therefore, claim 13 is also distinguishable over Kamezaki et al.

Claims 11 and 15 depend from independent claims 9 and 13, respectively, and recite further distinguishing features. Accordingly, claims 11 and 15 are also distinguishable over Kamezaki et al.

Applicants respectfully request that the rejection of claims 9, 11, 13 and 15 based on Kamezaki et al. be withdrawn.

**D. §103 REJECTION – KAMEZAKI ET AL., KAWAI ET AL.**

Claims 10, 12, 14 and 16 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kamezaki et al. in view of Kawai et al. (JP 09-068869 A). *See Office Action, pages 3-4.* Applicants respectfully traverse.

These claims depend from independent claims 9 or 13, directly or indirectly, which have been demonstrated to be distinguishable over Kamezaki et al. Kawai et al. does not correct the above noted deficiencies of Kamezaki et al. Accordingly, independent claims 9 and 13 as distinguishable over the combination Kamezaki et al. and Kawai et al. These dependent claims recite further distinguishing features. Accordingly, the dependent claims are also distinguishable over the combination of Kamezaki et al. and Kawai et al.

Applicants respectfully request that the rejection of claims 10, 12, 14 and 16 based on Kamezaki et al. and Kawai et al. be withdrawn.

**E. MISCELLANEOUS**

In view of the foregoing and other considerations, all claims are deemed in condition for allowance. A formal indication of allowability is earnestly solicited.

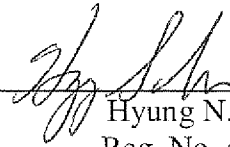
The Commissioner is authorized to charge the undersigned's deposit account #14-1140 in whatever amount is necessary for entry of these papers and the continued pendency of the captioned application.

Should the Examiner feel that an interview with the undersigned would facilitate allowance of this application, the Examiner is encouraged to contact the undersigned.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: \_\_\_\_\_



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